



In The  
**Supreme Court of the United States**  
October Term, 1978

— o —  
**No. 78-264**  
— o —

**EDWARD JOSEPH WEDELSTEDT,**  
*Petitioner,*  
**vs.**  
**STATE OF IOWA,**  
*Respondent.*

— o —  
**ON PETITION FOR CERTIORARI TO  
THE SUPREME COURT OF IOWA**  
— o —

**RESPONDENT'S BRIEF IN OPPOSITION**  
— o —

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**RESPONDENT'S BRIEF IN OPPOSITION**

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**ARGUMENT**

The State of Iowa respectfully submits Edward Joseph Wedelstedt's Petition for Certiorari should be denied for the following reasons:

**I. The Petition Was Not Timely Filed.**

Under Rule 22 of the Supreme Court Rules a petition for writ of certiorari to review a judgment of a state

court of last resort in a criminal case must be filed within 90 days after entry of judgment. Petitioner's request for rehearing to the Supreme Court of Iowa was denied May 17, 1978. His Petition for Certiorari to the Supreme Court of Iowa was filed on August 16, 1978; this is a date more than 90 days from the date the highest State court denied rehearing. Therefore the Respondent respectfully submits the Petition for Certiorari should be denied for failure to follow Rule 22 of the Rules of the Supreme Court of the United States. *U. S. ex rel. Coy v. United States*, 316 U. S. 342 (1942). But see, *Taglianetti v. United States*, 394 U. S. 316 (1969) (court has discretion to consider untimely filed petition).

## II. No Federal Question is Presented.

The issue in the present case is narrow and unique to its facts, and no amount of rhetoric can convert it into one warranting review on certiorari. The issue presented is whether or not the state court's doctrine of "take back" entrapment was established as a matter of law thus requiring dismissal of the charges against Petitioner. The trial court and the Iowa Supreme Court found the State had produced evidence sufficient to create a fact issue as to whether or not the State, through its agent, supplied stolen films to the Petitioner and the case was accordingly found to be properly submitted to the jury. As noted by the Supreme Court, the "key question was witness Meade's capacity when he took the films from Petitioner's farmhouse to the Cedar Rapids motel to await Gentry and Leone as they flew in from St. Louis. Did Meade then have possession of the films as a BCI agent or did he have possession as [Petitioner's] agent. *State v. Wedelstedt*, 263 N. W. 2d 894, 900 (Iowa 1978).

"Meade testified that he 'got' the location of the films when both a Mr. Karr and defendant told him to go there. Meade testified his belief the tape recording of the phone conversation would disclose this. (Transcript pp. 196-197). Defendant cannot rely on the tapes to withdraw this testimony. The tapes were at parts inaudible. Moreover the jury could believe Meade was right in his testimony but wrong in his stated belief the conversation was recorded on tape."

*State v. Wedelstedt*, 265 N. W. 2d 626, 627 (Iowa 1978). Petitioner's contention in reality is that the jury believed the wrong witness. Again, as noted by the Iowa Supreme Court, "It is elementary the jury is at liberty to take and reject from the testimony of various witnesses as it chooses." *State v. Wedelstedt, supra*, 265 N. W. 2d at 627. Their apparent attachment of greater credibility to Meade rather than Petitioner cannot be said to present an important question of constitutional law requiring review by this Court.

Furthermore, the facts in this case do not square with the *Overman* precedent on which Wedelstedt attempted to rely. Wedelstedt was not the victim of a full circle government scheme. Before Meade became involved in this case as a government agent, Wedelstedt had purchased and was in possession of the stolen films. This is not a situation where the State purchased the films from itself, through an intermediary (Wedelstedt) and then charged him with a crime. It is therefore apparent that the evil of the full circle transaction did not take place in the instant case and was therefore properly upheld. See, *United States v. Mahoney*, 355 F. Supp. 418 (E. D. La. 1973); *United States v. Chism*, 312 F. Supp. 1307 (C. D. Cal. 1970).

**CONCLUSION**

For the reasons detailed above, Respondent respectfully requests that, pursuant to this Court's supervisory power, this Petition be granted.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I, Ray Sullins, Special Assistant Attorney General for the State of Iowa, hereby certify that on the 13th day of October, 1978, I mailed three (3) copies of Brief for Respondent in Opposition, correct 1st class postage pre-paid to:

Arthur M. Schwartz, P.C.  
1500 Western Federal Savings Building  
Denver, Colorado 80202

I further certify that all parties required to be served have been served.

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